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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,012	02/04/2004	L..Curtis Lehmann JR.	5757-00401	4084
7590 11/19/2007				
Jeffrey C. Hood Meyertons, Hood, Kivlin, Kowert & Goetzel PC P.O. Box 398 Austin, TX 78767			EXAMINER MAUNG, ZARNI	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 11/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,012

Applicant(s)

LEHMANN ET AL.

Examiner

Zarni Maung

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/18/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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This action is responsive to the application filed on February 4, 2004. Claims 1-11 are presented for examination.

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-9 are directed to a method for data transport on an IP network, the method comprising: creating one or more virtual private networks to transport said data using one or more multicast routing protocols on the ends of each virtual private network tunnel, classified in Class **709**, subclass **238**.

II. Claims 10-11 are directed to a method for reduction of multipoint transport delay using an application and system to transport real-time media data; wherein one or more servers authenticates one or more user ID's for permission and assignment to said multicast group; wherein one or more servers generates said multicast group routing addresses for deliver to said multicast enabled routers, classified in Class **709**, subclass **243**.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations. (M.P.E.P. § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the Group I invention does not

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require one or more servers generates multicast group routing addresses for deliver to said multicast enabled routers. The subcombination has separate utility such as creating one or more virtual private networks to transport data using one or more multicast routing protocols on the ends of each virtual private network tunnel.

For example, the searches for the two inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

(a) the Group I search (claims 1-9) would require the use of search class **709**, subclass **238** (which would not required for the group II).

(b) the Group II search (claims 10-11) would require the use of search class **709**, subclass **243** (which would not required for the group I).

During a telephone conversation with Mr. Jeffrey C. Hood on October 15, 2007, a provisional election was made without traverse to prosecute the invention I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-11 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be

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accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wiget et al., U.S. Patent Number 6,640,251 (hereinafter Wiget).

Wiget teaches a system and method for using multicast-enabled address resolution protocol. Wiget discloses the invention substantially as claimed. As per claim 1, Wiget discloses a method for data transport on an IP network (10), the method comprising: creating one or more virtual private networks to transport said data (col., 3,

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lines 29-45); wherein said creating uses tunneling methods using one or more multicast routing protocols on the ends of each virtual private network tunnel (col. 4, lines 16-32).

As per claim 2, Wiget discloses the method of claim 1, further comprising: attaching a multicast address to a single application payload then routing the transport of said application payload to multiple remote clients through said virtual private network tunnels (see col. 4, lines 46-57).

As per claim 3, Wiget discloses the method of claim 1, further comprising: multicast routers coordinating the delivery of multicast packets from senders to receivers; wherein said routers may or may not be located at the said application payload creation or termination site (see col. 4, lines 25-34).

As per claim 4, Wiget discloses the method of claim 3: wherein client or host computers connect via multiple interconnect topologies including but not limited to peer-to-peer, hub and spoke, or meshed systems (see col. 3, lines 55-65).

As per claim 5, Wiget discloses the method of claim 2: wherein said tunnel creation, tear-down and multicast group address assignment may be instantiated in a software application running locally on the said client system (see col. 4, lines 1-45).

As per claim 6, Wiget discloses the method of claim 5: wherein said instantiated software may operate within said one or more tunnels; wherein one or more tunnels may encompass hardware multicast routers in said one or more interconnect topologies (see col. 3, lines 29-41).

As per claim 7, Wiget discloses the method of claim 1, further comprising: using encryption to encapsulate the media data such that said public network devices can not manipulate, discriminate or control the transport delay of said application payload between tunnel end points (see col. 4, lines 16-45).

As per claim 8, Wiget discloses the method of claim 1, further comprising: using the method as applied to endpoints, ingress/egress network access points and network hardware infrastructures (see col. 4, lines 48-64).

As per claim 9, Wiget discloses the method of claim 1, further comprising: multiple peers that reply to a multicast/VPN instance; wherein packets are forwarded to the next network hop without duplication; wherein the next hop of the egress point of the said virtual private network represents multiple endpoints; wherein said packets are duplicated at the said egress point for forwarding to each of the multiple peers (see col. 3, lines 28-46 and col. 4, lines 16-56).

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (Please see attached PTOL-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zarni Maung whose telephone number is (571) 272-3939. The Examiner can normally be reached on Monday-Friday from 8:30 to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, John Follansbee can be reached at (571) 272-3964. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, status information for published application may be obtained from either Private or Public PAIR, for unpublished application Private PAIR only (see <http://pair-direct.uspto.gov> or the Electronic Business Center at 866-217-9197 (toll-free)).

Any response to this action should be mailed to:

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ZARNI MAUNG
PRIMARY EXAMINER